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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959/1960.

No. 664 29

GIACOMO REINA, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 27, 1960
CERTIORARI GRANTED APRIL 4, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960-1960

No. 664-29

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Original Print

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., MAY 27, 1960

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**IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA, Appellee,

—against—

GIACOMO REINA, Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Appellant's Appendix—Filed October 8, 1959

[File endorsement omitted]

[fol. 4]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In Re
GIACOMO REINA

NOTICE OF HEARING OF APPLICATION FOR ORDER DIRECTING
GIACOMO REINA TO TESTIFY AND PRODUCE EVIDENCE—
December 8, 1958

Please take notice, that the undersigned will bring the attached application on for hearing before this court at Room 318, United States Court House, Foley Square, City of New York, on the 10th day of December 1958, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Arthur H. Christy, United States Attorney for the Southern District of New York, By Edward Brodsky, Special Attorney.

Special Attorney Edward Brodsky, Room 607H, Tel. No. CO 7-7100 X 468

[fol. 5]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPLICATION FOR ORDER INSTRUCTING GIACOMO REINA TO
TESTIFY AND PRODUCE EVIDENCE December 8, 1958

Arthur H. Christy, United States Attorney for the Southern District of New York, hereby makes application for an order instructing Giacomo Reina to testify and produce evidence, pursuant to the provision of Title 18, United States Code, Section 1406, and respectfully alleges as follows:

1. Giacomo Reina was subpoenaed to appear and did appear on the 5th day of December 1958, before a duly constituted Grand Jury of the Southern District of New York, sitting at New York, New York. This Grand Jury was then and there inquiring into alleged violations of the laws relating to narcotics, as set forth in Title 18, United States Code, Section 1406, in the Southern District of New York and elsewhere.

2. The Grand Jury asked Giacomo Reina the following questions, among others, relating to the above matters:

Mr. Reina, on March 21, 1956 you, along with Pasquale Moccio, Joseph Valachi, Pasquale Pagano and Lawrence Quartiero were convicted of conspiring to violate the narcotics laws. You received a jail sentence of five years, a fine of \$10,000 and you are now incarcerated in the Federal Penitentiary at Atlanta, Georgia.

From who did the group with which you were associated obtain the narcotics involved in that case?

[fol. 6] Under what circumstances did you first meet Eugene Giannini?

What are the names of the seamen on the New York waterfront from whom you and Eugene Giannini obtained narcotics?

Under what circumstances did you and Eugene Giannini first meet those seamen?

Mr. Reina, the Government has information that in March or April 1950 you, along with Eugene Giannini and Salvatore Shillitani, commenced buying heroin from a French group including Marius Ansaldi, Francois Paoleschi, Dominique Reissent, Joseph Orsini, Francois Spirito, Antoine D'Agostino, and Jean Laget.

Who are the people in this French group whose names I have omitted?

Under what circumstances did you first meet each of those French nationals?

When did each of those French nationals start to supply you with narcotics?

Who else in the United States did this group supply with narcotics?

How was the narcotics transported from Europe to the United States?

Who transported the narcotics to the United States?

How was the narcotics received from Europe disposed of in the United States?

Under what circumstances did you first meet Anthony Strollo, also known as Tony Bender?

Did Anthony Strollo or anyone working with or for him ever receive narcotics from any of the French nationals mentioned above?

Under what circumstances did you first meet Vincent Mauro also known as Jimmy Bruno?

Did Vincent Mauro or anyone working with or for him ever receive narcotics from any of the French nationals mentioned previously?

[fol. 7] Mr. Reina, the Government has information that a group of persons including you, Eugene Giannini and Salvatore Shillitani purchased at least six automobiles to be sent to Europe with couriers in order to obtain narcotics.

What is the name of each courier who went to Europe to obtain narcotics?

Did each automobile have a hidden compartment in it?

Who built the hidden compartment in each automobile?

In June 1950 did you, along with Francois Spirito and Eugene Giannini send John Palumbo and his mother Angelina Corona to Europe with a 1946 Packard automobile?

Were John Palumbo and his mother acting as couriers to obtain narcotics for you?

Were John Palumbo and his mother told that they were being sent to Europe to obtain narcotics?

Did they obtain narcotics in Europe?

Was the narcotics they obtained brought to the United States?

How was the narcotics obtained by them disposed of?

Who financed the trip?

Who bought the 1946 Packard car which was used by John Palumbo and his mother?

Mr. Reina, the Government has information that the rear door panels on the 1946 Packard were, unlike other cars, easily removable without any tool. With the panel free there was easy access to a hollow space formed by the body construction of the door.

Who prepared the removable door panel?

Was the hollow space used to hide narcotics?

During June 1950, did you arrange and finance a [fol. 8] trip to Salerno, Italy, with a 1949 Packard, for Louis Pacella, his wife, Jennie, and his mother, Maria?

Were any or all of them told to obtain narcotics in Italy?

Who did you tell them to contact in order to obtain narcotics?

Was narcotics obtained by them and brought to you in the United States?

How did you dispose of the narcotics?

Mr. Reina, the Government has information that the 1949 Packard had a hidden compartment in the back of the rear arm rest on the right side. The arm rest was made removable and, behind it, the upholstery was cut, thereby giving access to the area immediately below and above the right rear fender. The compartment is estimated as being capable of secreting about fifteen kilograms of narcotics.

Who prepared the compartment?

How many times was the 1949 Packard sent to Europe for the purpose of obtaining narcotics?

Who, besides Louis Pacella, his wife and his mother traveled to Europe with the 1949 Packard in order to obtain narcotics?

Mr. Reina, under what circumstances did you first meet Johanna Sophie Gross?

In November 1950 did you arrange to send Johanna Sophie Gross to Europe to further your smuggling activities?

Who did you tell her to contact in Europe?

Did she bring back narcotics from Europe between

November 1950 and January 1951, and hand it over to you?

How was the narcotics disposed of?

In May 1952 did you and Eugene Giannini arrange for Johanna Sophie Gross to travel to Salerno, Italy, [fol. 9] where she was to meet Giannini's brother-in-law, Joseph Pelligrino, and Genero Rizzo in order to obtain narcotics?

Did Johanna Sophie Gross obtain 4 kilograms of heroin from Joseph Pelligrino and Genero Rizzo on that trip?

How was the heroin disposed of?

Did Anthony Strollo or Vincent Mauro know of, or have anything to do with, the narcotics obtained by Johanna Sophie Gross on the aforementioned trip to Europe?

Mr. Reina, under what circumstances did you first meet Pasquale Cappaso?

Did Pasquale Cappaso travel to Europe in July 1951 at either your or Eugene Giannini's instructions?

Did you or Eugene Giannini tell Pasquale Cappaso to obtain about four kilograms of heroin on that trip?

From whom was the heroin obtained in Europe?

How was the heroin paid for?

After it was delivered to you in the United States how was it disposed of?

In July 1950 did you travel to France and, at the same time, have your Cadillac automobile shipped to France?

While in Europe did you obtain narcotics?

From whom did you obtain narcotics?

Did you return to the United States by air on August 12, 1950?

Was any narcotics brought back to the United States either by you or in your automobile?

How was the narcotics disposed of?

Mr. Reina, the Government has information that each member of the narcotics organization with which you were associated invested \$10,000 at the beginning of the venture.

[fol. 10] When did the venture start?

What is the name of each person who invested \$10,000?

Who took possession of the money?

Were any books or records of income and expenses maintained?

Who transported money to Europe to pay for narcotics purchased?

In what form was the money carried, for example, cash, check, money order?

Mr. Reina, the Government has information that during 1950 and 1951 you, Eugene Giannini; your brother Andrea, Mr. and Mrs. Louis Pacella, Mrs. Maria Pacella, Angelina Corona, John Palumbo, Madeline Valenti and Johanna S. Gross all obtained passports through Charles Spar, a member of the New York Bar.

Did Mr. Spar render any other service to you besides obtain passports?

Did Mr. Spar know that the persons for whom he obtained passports were engaged in the narcotics business?

Did you ever discuss narcotics with Mr. Spar?

What are the names of the other members of your narcotics group, besides the persons previously named, who obtained passports through Charles Spar?

Is your sister, Mildred, married to Joseph Valachi, also known as Joe Cago?

Did Joseph Valachi ever travel to Europe to acquire narcotics?

Did Joseph Valachi invest \$10,000 in the narcotics venture in which you were engaged?

Did Joseph Valachi ever supply you with narcotics?

Did you ever supply Joseph Valachi with narcotics?

Mr. Reina, was your father, Thomas, a member of the organization sometimes called the "Mafia"?

[fol. 11] Did your father have the title "Don" in that organization?

After your father's death, did you take his place and his title of "Don" in the organization?

What are the names of the members of the organization?

Mr. Reina, the Government has information that at the time of your arrest on February 25, 1955 you were a member of an organization including Eugene Gian-nini, Salvatore Shillitani and Pasquale Pagano, which imported narcotics into the United States.

What is the name of each member of the organization who I have omitted?

What was Anthony Strollo's role in this organization?

What was Vincent Mauro's role in this organization?

What was Joe Valachi's role in this organization?

Under what circumstances did you first meet John Stopelli?

In 1953 did John Stopelli, Vincent Mauro and Pasquale Moccio work together importing narcotics into the United States?

Do you know any of the following persons?

Joseph Bendenelli	Albert Corrado
Rocco Mazzei	Vincent Randazzo
Vincent Squillante	Louis Pacella
Frank Borelli	Ralph Ciccone
Anthony Castaldi	Fiere Siano

Fred Berry

As to any you know, state whether he is or was engaged in narcotics?

3. Giacomo Reina refused to answer the above questions on the ground that his answers might tend to incriminate him.

[fol. 12] 4. In my judgment as United States Attorney for the Southern District of New York, the testimony of Giacomo Reina is necessary and material to the investigation now being conducted by the Grand Jury with respect to the alleged narcotics violations. The pursuit of investigations such as this was exactly what Congress had in mind when it enacted this immunity statute. It is further my judgment that the testimony of Giacomo Reina concerning the matters under inquiry and his responses to the above questions are necessary to the public interest of the United States.

5. This application is made in good faith, and with the approval of William Rogers, Attorney General of the United States. A copy of a letter from the Attorney General expressing such approval is attached hereto as Exhibit A.

6. Because the questions herein cover facts about persons not presently before this Court, and because the nature and content of the proceeding before this Grand Jury should be kept confidential, subject to the proper objection of any person aggrieved thereby, it is respectfully requested that this application be sealed, subject to further order of the Court, or any Judge thereof.

Wherefore, I Arthur H. Christy, United States Attorney for the Southern District of New York, request the Court to order Giacomo Reina to answer the above questions and to testify and produce evidence relating to the matters under inquiry, pursuant to the provisions of Title 18, United States Code, Section 1406.

Arthur H. Christy, United States Attorney.

Dated New York, N. Y., December 8, 1958.

[fol. 13]

CERTIFICATE OF EDWARD BRODSKY DATED
DECEMBER 8, 1958

Edward Brodsky, Special Attorney, Department of Justice, hereby certifies upon personal knowledge as follows:

1. Giacomo Reina was subpoenaed to appear and did appear on the 5th day of December, 1958, before a duly constituted Grand Jury of the Southern District of New York, sitting at New York, New York. This Grand Jury was then and there inquiring into alleged violations of the laws relating to narcotics, as set forth in Title 18, United States Code, Section 1406, in the Southern District of New York and elsewhere.

2. The Grand Jury asked Mr. Reina the questions set forth in the attached application for an order instructing

Giacomo Reina to testify and produce evidence pursuant to the provision of Title 18, United States Code, Section 1406.

3. Giacomo Reina refused to answer the above questions on the ground that his answers might tend to incriminate him.

4. Because the questions herein cover facts about persons not presently before this Court, and because the [fol. 14] nature and contents of the proceeding before this Grand Jury should be kept confidential, subject to the proper objection of any person aggrieved thereby, it is respectfully requested that this application be sealed, subject to further order of the Court, or any Judge thereof.

Dated: New York, N. Y., December 8, 1958.

Edward Brodsky, Special Attorney, Department of Justice.

[fol. 15]

EXHIBIT "A" ANNEXED TO APPLICATION

December 8, 1958

Arthur H. Christy, Esquire
United States Attorney
New York, New York

Dear Mr. Christy:

It is my understanding that on December 5, 1958, GIACOMO REINA appeared before a Grand Jury in the Southern District of New York which is inquiring into alleged violations of the laws relating to narcotics, as set forth in Title 18, United States Code, Section 1406. It is my further understanding that GIACOMO REINA refused to answer material questions on the ground of the privilege against self-incrimination afforded him by the Fifth Amendment to the Constitution of the United States.

You have informed me that it is your judgment that the testimony of GIACOMO REINA is necessary to the public interest. With this judgment, I am in complete accord. You are, therefore, authorized to make Application to the United States District Court for the Southern District of

New York for an order instructing the witness to testify and produce evidence, pursuant to the provisions of Title 18, United States Code, Section 1406.

Sincerely,

WILLIAM P. ROGERS
Attorney General

[fol. 16]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ORDER OF EDELSTEIN, D.J., DATED DECEMBER 17, 1958

Arthur H. Christy, United States Attorney for the Southern District of New York, having on the 10th day of December 1958, made an Application, orally and in writing, upon notice to Giacomo Reina, a witness appearing before a Grand Jury of the Southern District of New York then inquiring into alleged violations of the laws relating to Narcotics, as set forth in Title 18, United States Code, Section 1406, in the Southern District of New York and elsewhere, for an Order instructing said Giacomo Reina to testify and produce evidence before said Grand Jury pursuant to the provisions of Title 18, United States Code, Section 1406, as amended, and said Application having duly come on to be heard before this Court on the 10th day of December 1958.

Now, upon reading the written Application of Arthur H. Christy, the United States Attorney in and for the Southern District of New York, the approval of the Attorney General of the United States to said Application dated 8th day of December 1958, the Certificate of Special Attorney Edward Brodsky, dated the 8th day of December 1958, all submitted in support of said Application, and due deliberation having been had thereon, and it appearing as follows:

1. Giacomo Reina was subpoenaed to appear and did appear on the 5th day of December 1958, before a duly constituted Grand Jury of the Southern District of New York.

[fol. 17] 2. The Grand Jury was then and there inquiring into alleged violations of the laws relating to Narcotics, as set forth in Title 18, United States Code, Section 1406, in the Southern District of New York and elsewhere;

3. Giacomo Reina refused to answer certain questions relating to matters under inquiry before said Grand Jury and specifically set forth in the aforesaid Application on the ground that his answers might tend to incriminate him;

4. In the judgment of the United States Attorney the testimony of the said witness concerning the aforesaid matters is necessary to the public interest of the United States; and

5. Said Application for an Order that the witness shall be instructed to testify or produce evidence subject to the provisions of Title 18, United States Code, Section 1406, was made with the approval of the Attorney General of the United States;

it is

Ordered that Giacomo Reina appear as a witness before said Grand Jury at Room 608 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 12th day of January 1959, at 10:00 o'clock in the forenoon; and it is further

Ordered, subject to the provisions of Title 18, United States Code, Section 1406, as amended, that Giacomo Reina be, and he hereby is, instructed to answer the questions propounded to him before the Grand Jury and to testify [fol. 18] and produce evidence with respect to such matters under inquiry before said Grand Jury; (and it is further

Ordered that the papers filed herein shall be sealed subject to the further order of the United States District Court for the Southern District of New York, or any Judge thereof.)

Dated: New York, New York, December 17, 1958.

David Edelstein, United States District Judge.

[fol. 19]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ORDER TO SHOW CAUSE TO PUNISH FOR
CONTEMPT OF COURT—JANUARY 15, 1959

Upon the application of Arthur H. Christy, United States Attorney for the Southern District of New York, and annexed certificate of Edward Brodsky, Special Attorney, Department of Justice, it appearing therefrom as follows:

1. Giacomo Reina was subpoenaed to appear and did appear on the 5th day of December 1958 before a duly constituted Grand Jury of the Southern District of New York;
2. The Grand Jury was then and there inquiring into alleged violations of the laws relating to narcotics as set forth in Title 18, United States Code, Section 1406;
3. Giacomo Reina refused to answer certain questions relating to matters under inquiry before said Grand Jury, which questions are set forth in the government's application, dated the 8th day of December 1958, for an order instructing Giacomo Reina to testify and produce evidence pursuant to the provisions of Title 18, United States Code, Section 1406, a copy [fol. 20] of which is attached hereto and made a part hereof, and was served upon him;
4. On December 17, 1958, upon oral and written application of the United States Attorney, notice having been given, Giacomo Reina, was directed by Order of Hon. David N. Edelstein United States District Judge, to return to the Grand Jury on January 12, 1959 and answer said questions;
5. On January 15, 1959, after being adjourned, Giacomo Reina returned to the Grand Jury as directed, but then and there wilfully refused to answer the questions as directed, it is hereby

Ordered that Giacomo Reina show cause at a Term of this Court, to be held on the 21st day of January 1959, at 10:30 o'clock in the forenoon of that day at Room 318, United States Courthouse, Foley Square, New York City, or as soon thereafter as this matter may be heard, why he should not be adjudged and held in contempt of this Court, and punished for such contempt of this Court.

Service of this Order on the respondent or his counsel at any time prior to 10:00 o'clock on the 16th day of January 1959, shall be deemed sufficient.

A. O. Dawson, United States District Court Judge

Dated: New York, N. Y., January 15, 1959.

[fol. 21]

**CERTIFICATE OF EDWARD BRODSKY DATED
JANUARY 15, 1959**

Edward Brodsky, Special Attorney, Department of Justice, hereby certifies, upon personal knowledge, as follows:

1. Giacomo Reina was subpoenaed to appear and did appear on the 5th day of December 1958, before a duly constituted Grand Jury of the Southern District of New York;
2. The Grand Jury was then and there inquiring into alleged violations of the laws relating to narcotics, as set forth in Title 18, United States Code, Section 1406;
3. Giacomo Reina refused to answer certain questions relating to matters under inquiry before said Grand Jury, which questions are set forth in the government's application, dated the 8th day of December 1958, for an order instructing Giacomo Reina to testify and produce evidence pursuant to the provisions of Title 18, United States Code, Section 1406, a copy of which is attached hereto and made a part hereof and was served upon him;
4. On December 17, 1958, upon oral and written application of the United States Attorney, notice having been given, Giacomo Reina was directed by Order of Honorable David N. Edelstein, United States Dis-

triet Judge to return to the Grand Jury on January 12, 1959 and answer said questions;

[fol. 22] 5. On January 15, 1959 after being adjourned, Giacomo Reina returned to the Grand Jury as directed, but then and there wilfully refused to answer the questions as directed.

Edward Brodsky, Special Attorney, Department of Justice.

Dated: New York, N. Y., January 15, 1959.

[fol. 23]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Cr. 158-80

Hearing on Motion to Punish for Contempt of Court

Before: Hon. Archie O. Dawson, District Judge.

New York, January 22, 1959, R. 318.

APPEARANCES:

Arthur H. Christy, Esq., United States Attorney, for the Government; By Milton H. Wessel, Esq., Edward Brodsky, Esq., and William Esbitt, Esq., Special Assistants to the Attorney General.

Moses L. Kove, Esq., Attorney for the Defendant.

The Court: Is the Government ready?

Mr. Brodsky: The Government is ready.

The Court: Is the defendant ready?

Mr. Kove: Yes, your Honor.

The Court: All right. This is a hearing?

Mr. Brousky: Your Honor, this is a hearing pursuant to an order to show cause signed by your Honor on January

15, 1959, as to why Giacomo Reina should not be adjudged in contempt of this court.

[fol. 24] Reina is now serving a five-year sentence for violation of the Federal Narcotics Laws, appeared before a grand jury in this district on December 5, 1958. He was asked a series of questions, all of which related in some way to narcotics violations, and all of which are based on information which leads the Government to believe that he can answer truthfully the questions that were asked of him.

With respect to each question the witness refused to answer on the ground that his answers might tend to incriminate him.

On December 9, 1958, he returned to the grand jury and was given a second opportunity to answer all the questions. He refused to answer again on the ground that his testimony might tend to incriminate him.

At that time he was served with a notice to appear in the District Court on December 10, 1958, or such time thereafter as counsel could be heard. He was also served with an application for an order directing him to testify pursuant to the immunity provisions of the Federal Narcotics Control Act of 1956.

He also was served with a copy of the Attorney General's letter dated December 8, 1958, authorizing the United States Attorney for the Southern District of New York to make the application, and a certificate signed by me contained the facts surrounding the application.

Subsequently the witness made two more short appearances before the grand jury. He then appeared with his attorney, Mr. Moses Kove, on December 17, 1958, before Judge Edelstein, and the Government applied to the court for an order directing him to testify pursuant to the immunity provisions of the Narcotics Control Act. Judge Edelstein directed the witness to return to the grand jury and answer all the questions which were propounded to him. Of course the witness would be immune from prosecution with respect to all transactions about which he testified.

[fol. 25] On January 15, 1959, the witness returned to the grand jury and stood mute with respect to all questions which were propounded to him. Your Honor signed an order to show cause why he should not be cited for con-

tempt on January 15, 1959, and we are now prepared to have a hearing on that order. I understand that Mr. Kove is willing to concede that the facts as I have stated them are correct.

Mr. Kove: That is so, your Honor.

The Court: I presume we better put it on the record.

Mr. Kove: That is entirely within your Honor's discretion. I might say to you now, sir, that I think that I am ready to concede that the facts as related by Mr. Brodsky are to my knowledge correct. I have suggested to him, subject to your Honor's approval, that I would concede, having been shown a transcript of the last appearance which is the subject matter of the order to show cause that if reflected the fact that he stood mute on that occasion, that I would concede for the record that that was so. The reason being, sir, and I think I should apprise the court of it at this time is that the defendant's desire that counsel, either myself or someone else, would take up the question of the constitutionality of the immunity section referred to. And it is on that basis, sir, that I say to you that there is not any question here about, having stood mute on the last appearance before the grand jury—

The Court: Your defense will relate to the constitutionality?

Mr. Kove: That is correct, sir.

Mr. Brodsky: If your Honor please, we would like to put into the record the grand jury testimony of Giacomo Reina.

The Court: We will make a full record of this so there cannot be any question.

Mr. Kove: I would appreciate that, your Honor. Otherwise I do not know how I could get the record to go up with. [fol. 26] The Court: We will have to have a complete record, so there cannot be any question about it. I just wanted to make sure what the defendant's position was. Let me ask you now, Mr. Kove, would the defendant now be ready to testify and answer these questions?

Mr. Kove: At the very present moment his answer to that is, no. I do not foreclose the possibility in the future; I might say, your Honor, I was called in by other counsel,

so I am more or less limited as to all the commitments that I would make in this hearing.

The Court: I realize that. I just want to make certain that we are not going through a futile act here, if the defendant is now ready to answer the questions, even though he refused to answer them in the past, that we might be able to have him now go before the grand jury.

Mr. Kove: I appreciate that, your Honor, I explored that proposition.

The Court: You may proceed with your evidence then.

Mr. Brodsky: I would like to call Miss Magnetic Love.

Mr. Kove: If your Honor please, she is one of the court stenographers. I am ready to concede these facts.

Mr. Brodsky: Your Honor indicated that you wanted us to proceed—

The Court: I presume you have a transcript of the record.

Mr. Brodsky: Yes, we have.

Mr. Kove: I read the transcript.

The Court: Maybe we can admit that the witness if called would testify that she was a grand jury stenographer, that she took these minutes and transcribed them and they are accurate.

Would you be ready to concede that, Mr. Kove? You read the minutes.

Mr. Kove: Yes, I read the transcript. The transcript was furnished to me a little while ago.

The Court: On that basis you can offer those transcripts. [fol. 27] Mr. Brodsky: Thank you, your Honor.

We now offer those transcripts as the Government's exhibits.

Mr. Kove: I have read a copy of them, your Honor. I am sure it is the original, the copy that I have. No objection.

(Marked Government's Exhibit 1 in evidence.)

Mr. Brodsky: If your Honor please, there are two other reporters who took this testimony, if Mr. Kove will concede that their report is accurate, that the testimony was transcribed, that this is an accurate transcript, then we would offer them in evidence.

The Court: What we come down to is this: does Mr. Kove, the attorney for the defendant, concede that the grand jury stenographers who took these transcripts, if called, would testify that they were grand jury stenographers, they took the testimony, they transcribed it accurately and these transcripts that are now offered in evidence are true and accurate transcripts of the proceedings before the grand jury?

Mr. Kove: That is right, your Honor.

The Court: You will concede that, Mr. Kove?

Mr. Kove: Yes.

The Court: To save calling the witnesses.

Mr. Kove: That was exactly my motive. They are all contained in that exhibit, are they not?

Mr. Brodsky: Yes.

The Court: What is Exhibit 1 now?

Mr. Brodsky: If your Honor please—

The Court: A transcript of what?

Mr. Brodsky: This is a transcript of the testimony of Giacomo Reina in the Southern District of New York before a grand jury on December 5, 9, 10 and 11, 1958, and January 15, 1959.

[fol. 28]. The Court: The accuracy is conceded by the defendant, so we will receive this in evidence.

Mr. Kove: If your Honor pleases, just to supplement my previous statement, so as to preserve the record, in addition to testing the constitutionality of the statute per se, I would like to preserve the record in this case with the right to also test the materiality of any questions that might appear that probably will not be material within the context of that statute.

The Court: All right. I understand that. Before we get that far I would like to know what we are looking for as to the evidence. I get your point.

Where is the Attorney General's letter? Is that going to be offered in evidence, too?

Mr. Brodsky: Yes, your Honor.

The Court: I have gone through this. Any further evidence?

Mr. Brodsky: If your Honor please, there are a series of papers which are sealed and at this time I move to have

the seal broken and the papers offered in evidence. Those papers include an application for an order directing Giacomo Reina to testify, a notice of that application, letter dated December 8, 1958, from the Attorney General to the United States Attorney for the Southern District of New York, and an order signed by Judge Edelstein dated December 17, 1958, directing Giacomo Reina to testify.

The papers also include a certificate signed by me which includes the facts surrounding the circumstances of this case.

The Court: I direct that the seal be broken and they be offered in evidence. You offer these papers in evidence?

Mr. Brodsky: Yes, your Honor.

The Court: Which is a notice of an application for a [fol. 29] hearing to be held on December 10. The application is signed by Mr. Christy, and a certificate signed by Mr. Brodsky, a copy of a letter signed by Mr. Rogers, the Attorney General, authorizing Mr. Christy to make application to the United States District Court for the Southern District of New York for an order instructing the defendant to testify and to give evidence pursuant to the provisions of Title 18, United States Code, Section 1406; order signed by Judge Edelstein dated December 17, 1958, in which the defendant was directed to appear as a witness before the grand jury on the 12th day of January, 1959, in order to answer the questions propounded to him before the grand jury as heretofore, pursuant to the provisions of the statute, Title 18, United States Code, Section 1406. These will be received in evidence.

Mr. Brodsky: Your Honor, for the record, the witness was ordered to appear before the grand jury on January 12, and that appearance was adjourned to have him appear on January 15, to answer those questions, and he stood mute with respect to those questions.

Mr. Kove: That is conceded, your Honor.

The Court: He was directed to appear first on January 12, under this order. How was that adjourned? Was that adjourned by the grand jury?

Mr. Brodsky: Yes, your Honor.

The Court: Was he served with a copy of this letter of the Attorney General?

Mr. Brodsky: Yes, your Honor.

Mr. Kove: Yes, your Honor, the papers were served.

The Court: Also a copy of this order directing him to testify!

Mr. Kove: By Judge Edelstein's order?

The Court: Yes.

Mr. Kove: Yes.

The Court: Anything further?

Mr. Brodsky: Nothing further.

[fol. 30] There are some very small and minor differences between the questions as they appear in the Government's application and as they appear in the transcript. For the record I would like to point out these small discrepancies, if your Honor please.

On December 5, 1958, the transcript has the following question:

"Did Vincent Mauro or anyone working with or for him ever receive narcotics from any of the French Nationals mentioned previously above?"

The application leaves out the word "above." The transcript says "in July of 1950." The application says, "in July, 1950."

And also on December 5, 1958, the transcript has the word "passport," and the application the words "passports."

Those are the only differences between the transcript and the application.

The Court: Anything further?

Mr. Brodsky: That is all, your Honor. The Government rests.

MOTION TO DENY MOTION TO PUNISH FOR CONTEMPT

Mr. Kove: On behalf of the defendant in this contempt proceeding, your Honor, I respectfully move you for a denial of the motion to punish for contempt on the ground that this defendant's position as to Title 18, Section 1406 of the United States Code in violation of the Fifth and Fourteenth Amendments of the United States Constitution, in that it does not provide the broad immunity contemplated by the two sections of the Constitution; and on

the further ground that there appear to be several of the questions propounded that are not within the context of the meaning of the statute as enacted.

The Court: Do you wish to argue those points now?

Mr. Kove: I do not think it would be necessary, your Honor because it would take more than just the argument [fol. 31] to point up which—you are talking about the specifics, the questions?

The Court: First of all, a point of law about the question of the constitutionality.

Mr. Kove: The only argument that I can make at this stage, your Honor, is that since Section 1406 provides that upon application to a court, after certification by the Attorney General, the witness may be granted immunity. There is nothing in the section which indicates the breadth of that immunity with respect to possible prosecution in other jurisdictions, specifically other than Federal jurisdictions. I have in mind state jurisdictions.

I am also mindful of the fact that a similar statute with respect to the subversive control legislation that was passed by Congress, that there the Supreme Court has spoken. I submit, though, at this stage that there is a difference; that Congress wrestled with the problem at great length before they enacted this statute.

It is our position at this time that the enactment of this immunity statute is just one of many attempts to chip away the basic liberties guaranteed by the Constitution. I believe that we should have the opportunity of testing this specific statute, independently of any decisions that might have been made with respect to other sections of the Code, the United States Code, to determine how far the Supreme Court is going to countenance the enactment of statutes which, to use the vernacular, would constitute exemptions on the restrictions contained in the Fourteenth and Fifth Amendments to the Constitution.

I submit to you that this section, I do not believe at this point, is that kind of a statute which would be justified under all the circumstances.

The Court: I do not quite see why. What is this constitutional right that you are talking about?

[fol. 32] Mr. Kove: The broad constitutional right of a defendant, your Honor, although I may be in error, this is the way I think, is that if he refuses to answer, which is a basic right, and if he is then given immunity from answering, should be the kind of immunity where no jurisdiction, federal or state, could then come along and prosecute upon any matter relating to or arising out of the answers to the questions contained in the so-called immunity.

The Court: You admit that the statute does give federal immunity.

Mr. Kove: From its language I think it does, sir.

The Court: Your point is that it might not grant him immunity under state laws?

Mr. Kove: That is correct. That is my present view of it. I suppose that it will probably distill itself down to being the question. I think that would be the hard core eventually.

The Court: What is this case involving subversive activities?

Mr. Kove: I do not know what the arguments were, I am frank to admit, your Honor. I have not researched that question at all, for the sake of the record, so that your Honor won't think that I am being dilatory, I just got through trying a two weeks' case which ended last night at about ten o'clock. I haven't had physical time to do very much of anything. But my advice comes to me from other counsel that this is basically what happened in the other situation. I think that they are not parallel, because I think it is the sense of the opinion there that this was a national emergency and that in those types of emergency they might countenance Congress enacting statutes limiting the force and effect of the Fifth Amendment to the Constitution. I respectfully submit that this would probably be our argument, that this Section 1406 does not countenance the type of emergency that Congress had in mind, or should have had in mind.

[fol. 33]. In other words, I suppose they could say that it is an undue limitation or undue restriction of the rights guaranteed by the Fifth Amendment to the Constitution.

The Court: What is this right guaranteed under the Fifth Amendment? The right is that no man shall be called upon to testify against himself.

Mr. Kove: That is the basic language of the founding fathers, your Honor, but I think over the years that there has been a lot of case law grow up around that section which would indicate quite clearly that any time a man gives information—withdrawn. If a man is required to give information which might ultimately lead to his prosecution or conviction for a crime that comes within the framework of the Fifth Amendment. I think there is no quarrel about that being its meaning; whether he gives direct evidence against himself or information which might lead to evidence against himself.

The Court: Has this question ever been raised before?

Mr. Kove: With respect to this section?

The Court: The constitutionality of the section?

Mr. Kove: I do not think it has, sir.

Mr. Brodsky: Yes.

Mr. Kove: I stand corrected, if it has. My information was that it had not been.

Mr. Brodsky: If your Honor please, the question was raised on the precise point that Mr. Kove is raising now as to whether or not a person would be granted immunity from state prosecution was raised in the Sixth Circuit.

Mr. Kove: Yes. The Tedesco case?

Mr. Brodsky: Yes.

Mr. Kove: I am sorry that I answered your Honor erroneously, I read that case very hurriedly. The Sixth Circuit case does answer that question. I must say most respectfully that I disagree with that opinion.

The Court: You think they were wrong.

Mr. Kove: I do.

[fol. 34] The Court: Is that the Corona case?

Mr. Kove: No, Tedesco, T-e-d-e-s-c-o, against the United States, 225 Fed. 2nd, 35. It is a Sixth Circuit case decided in 1958.

The Court: Decided when?

Mr. Kove: 1958, last year.

The Court: 225 Fed. 2nd?

Mr. Kove: Yes, sir.

The Court: What was the second point that you raised, about certain questions being irrelevant?

Mr. Kove: On that score, your Honor, I merely wanted to preserve the record, if it should appear that any questions were not relevant I would have the right to include that and go up on that basis.

The Court: I do not think you have the right to include that unless you argue it to me and give me the opportunity to pass on it.

Mr. Kove: Here is what I want to say, your Honor: the questions as I see them in the papers are not irrelevant, but I raised this question before Judge Edelstein at the time that he signed the original order as to whether the defendant should testify. I said then that I thought that we were entitled to know, rather than we were entitled to have it known that we were being confined, the order was being confined, to the questions that were included in the motion papers, asking for the granting of that order. My application was denied. Judge Edelstein's ruling, I believe, was that the defendant should be ordered to answer all questions including those which might not appear in those papers.

I say to you now it does not appear to me from the papers that I have that there are any questions that are actually irrelevant, but since Judge Edelstein's order appeared to be broader than it does on its surface, I wanted that protection should other questions be propounded.

[fol. 35] The Court: All questions that are certified here, they are not irrelevant, and those are the questions which the witness has refused to answer, and he is charged with contempt.

Mr. Kove: I do not see any specifically outside the context of the motion.

The Court: Do you wish to file any brief on these points?

Mr. Kove: I would say yes, your Honor, but I have no way of advising you how much time I need. I am getting some assistance on this. I would need some time. I would appreciate the Court's extreme generosity.

The Court: When we are talking about some time, what are we talking about?

Mr. Kove: Well, if I am going to state a specific time, I would say two weeks.

The Court: I do not see that you need two weeks. There is only one question, which is the constitutional provision. The other point I do not think amounts to much, in view of what you say now. The constitutionality provisions, you could brief that, I think, in twenty-four hours.

Mr. Kove: I could, your Honor, if I had nothing else to do. I have a one-man practice.

The Court: I understand you were up until midnight last night.

Mr. Kove: It was very fatuous.

The Court: If you stay up until midnight tonight, you can finish the brief in this case.

Mr. Kove: If I stay up until midnight tonight and a few more nights, it soon might become academic so far as I am concerned. I would not want to speed that on too fast because I had a narrow escape not too long ago.

The Court: If there is any learning on the subject I will be glad to receive it. As I recall it, there were some things about it in the Law Review.

Mr. Kove: There probably were, but I confess complete [fol. 36] ignorance at this moment as to what it was, where it was or whose law review it was. My application, your Honor, is made in good faith. I have to start from scratch. This is not the type of question that comes up normally, where we can put our fingers on it and know where to start from immediately.

The Court: I cannot put it off for two weeks because the first week in February I start in motion part. That month of February is going to be a cruel and unusual punishment on any judge, in the motion part. This motion is going to be decided within a week by me. I have to decide it before the end of this month, which is next week. If you want to have a few days to file a brief, I will be glad to receive it. Other than that I cannot do it.

Mr. Kove: Today is the 22nd. May I have a week, your Honor?

The Court: No, because I am going to decide it within a week. A week from now will be the 29th.

Mr. Kove: According to your Honor's own suggestion, you do not expect this to be a very long brief, so you won't need as much time to read it as I will need to write it.

The Court: It doesn't have to be very long. One good case is worth a lot of argument.

Mr. Kove: That is true.

The Court: How about letting me have it by Tuesday, anything that you get together. You can work on it Saturday, I will be working Saturday.

Mr. Kove: Judge, I would gladly change positions with you. I will try to do something on it.

The Court: Would the Government wish to file any memorandum on this subject?

Mr. Brodsky: Yes, your Honor, we would.

The Court: All briefs in then by Tuesday.

Mr. Esbitt: May we have a day or two after Mr. Kove files his brief, so we can look it over?

[fol. 37] The Court: All briefs in by Tuesday at four o'clock. Then I will hand down my opinion. All briefs by Tuesday.

You do not wish to offer any evidence, I take it, Mr. Kove, at all?

Mr. Kove: In the present posture of this case, I do not think I can, your Honor.

The Court: You just made a motion now to dismiss on certain grounds. I will now say that I am denying your motion. You can proceed to put in any evidence that you wish.

Mr. Kove: I rest and renew my motion on the same grounds.

The Court: I will decide that after I get the briefs.

Mr. Esbitt: May we be heard with respect to the sentence, your Honor?

The Court: I should think so. Do you want to say anything now? Frankly, my feeling at the present time is that unless there is something to this constitutional point that Mr. Kove makes, obviously the man must be guilty of contempt. I am not deciding any constitutional point until I get the briefs. Other than that the man will be held guilty of contempt. I think even Mr. Kove admits that. If he is to be held in contempt, what does the Government want to suggest?

Mr. Brodsky: If the Court please, the files of the Federal Bureau of Investigation, and Mr. Reina's Federal Peni-

tentiary Prison file shows the following: He was born on September 21, 1909, in New York City.

On January 1st, 1929, when he was nineteen he was arrested following the robbery of a drug store, charged with assault and robbery and committed to the Elmira Reformatory on April 11, 1929.

He was paroled on November 18, 1930, and returned to the home of his mother. During the period of his parole he was arrested twice. On July 2, 1931, he was apprehended following an alleged robbery. He was acquitted and reinstated on parole.

[fol. 38] On July 1, 1931, he admittedly struck a man who fell to the sidewalk suffering from a fractured skull which necessitated ten days' hospitalization. The complaint was withdrawn by the victim.

On October 4, 1933, he was returned to custody as a parole violator and was re-paroled on March 27, 1934.

On June 29, 1934, he was taken to the City Prison pending an investigation and as he left the courtroom in the custody of the parole officer, he and an accomplice who was waiting for him, attacked the officer and escaped in a waiting automobile. He was a fugitive for about eight and one-half years, during which time a search was conducted for him.

On December 16, 1942, he was arrested by an agent of the Federal Bureau of Narcotics and returned to prison as a parole violator. He was discharged from the Auburn Prison at the expiration of his sentence on December 28, 1947.

On March 21, 1956, he was convicted along with four other persons for violating the Federal Narcotic laws. He was fined \$10,000 and received a sentence of five years, which he is presently serving.

Your Honor, the Government believes that Mr. Reina's contempt of this court, along with his long history of defiance of law and order deserves a long jail sentence, to commence upon the expiration of his present period of incarceration, which will be approximately two years from now, or a minimum of approximately one year from now.

We cite to the Court's attention the case of United States versus Green, which was affirmed by the Supreme Court this year in which your Honor sentenced two confemnors

to three years in jail, those sentences to commence after the expiration of the five-year sentence imposed for violation of the Smith Act.

[fol. 39] We would also like to cite for the Court's attention the case of United States versus Tompkins, which was affirmed by the Court of Appeals for this circuit, in which Judge Noonan imposed a four-year sentence for contempt of court.

The Government feels that the contumacious conduct of this witness calls for a substantial jail sentence, not only as punishment to this witness but as a deterrent to the entire criminal world that the Government will not tolerate and will not permit underworld lockjaw for the underworld code of silence and secrecy to frustrate the lawful and proper activities of this or any other grand jury in the United States. We feel most strongly that this court should impose a substantial jail sentence on this witness as a warning to him and others who may be disposed to remain silent.

I make these comments with full realization that the Fifth Amendment to the Constitution of the United States is a privilege which is properly and lawfully offered to every individual who may appear before a grand jury. But I also say to your Honor that when that privilege has been withdrawn by lawful order of this court and when that privilege no longer exists, as it no longer does in this case, that the silence by this witness is an affront not only to the grand jury but to the judges of the Federal court. The Government of the United States cannot and will not permit its lawful and investigative, prosecutive officers to be frustrated and rendered ineffective by such silence.

For these reasons we urge the Court, within your Honor's discretion, as provided by 18 U.S.C. 401, to impose a substantial jail sentence against this witness.

Thank you, your Honor.

The Court: Do you wish to comment on that at all, Mr. Kove? You do not have to, if you do not want to.

Mr. Kove: It is a very beautiful speech, but I do not think it has anything to do with punishment for contempt, [fol. 40] if contempt there be under the law. I am interested now in finding something to sustain the legal question, rather than this record. I only want to say one thing in

passing. I have been a prosecutor myself, and perhaps I have fallen in that pattern occasionally. But I hope now in this well gotten up history of the defendant's record, they involve records which do not constitute convictions for crime. I would ask your Honor that that amount of discretion be applied to this case, because there is no way of disproving the guilt of a man who is claimed to be guilty for something which resulted in no criminal act and prosecution. That is all I have to say. I have my own reasons as to why the record was revealed in open court at this time. I do not think it has anything to do with passing sentence on a man because I think what we should be bound by in the true administration of justice and are those things which would constitute conviction for crimes having been committed and these are things that could happen to many, any people who are not guilty of any crime. I simply want to point that out to your Honor in passing.

The Court: If there is nothing more, the case will be adjourned. I here is anything further, put it in Tuesday with your brief.

[fol. 41]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OPINION OF DAWSON, J., DATED JANUARY 29, 1959
FINDING DEFENDANT IN CONTEMPT, ETC.

Dawson, D. J.:

This is a proceeding brought on by an order to show cause to adjudge the respondent to be in contempt of court. See Title 18, U. S. C., §401. It is alleged that the respondent is in contempt for refusing to answer certain questions put to him when he appeared as a witness before the Grand Jury.

A hearing was held and testimony taken. The Court, after having heard the evidence offered on the part of the United States of America, no evidence having been offered [fol. 42] on behalf of the respondent, makes the following findings of fact:

1. On December 5, 1958, Giacomo Reina duly appeared before a Grand Jury in the Southern District of New York, pursuant to a writ of habeas corpus ad testificandum duly served upon him.

2. Said Grand Jury was duly constituted in the Southern District of New York to investigate, among other things, matters relating to alleged violations of the Federal Narcotic Laws.

3. Giacomo Reina was asked a series of questions relevant and pertinent to matters then pending before the Grand Jury and Giacomo Reina refused to answer those questions on the ground that his answers might tend to incriminate him.

4. By letter dated December 8, 1958 the Attorney General of the United States authorized the United States Attorney for the Southern District of New York to apply for an order directing Giacomo Reina to testify pursuant to the provisions of 18 U. S. C. §1406.

5. On December 17, 1958, pursuant to the provisions of 18 U. S. C. §1406, the Honorable David N. Edelstein directed Giacomo Reina to return to the Grand Jury on January 12, 1959 and ordered that "subject to the provisions of Title 18, United States Code, Section 1406, as amended, that Giacomo Reina be, and he hereby is, instructed to answer the questions propounded to him before the Grand Jury and to testify and produce evidence with respect to such matters under inquiry before said Grand Jury...."

[fol. 43] 6. On January 12, 1959, Giacomo Reina appeared before the said Grand Jury and was directed to return on January 15, 1959.

7. On January 15, 1959 Giacomo Reina returned to the Grand Jury and was asked the same questions as had been asked on December 5, 1958. He refused to answer and stood mute with respect to each question.

8. On January 15, 1959, this Court ordered Giacomo Reina to show cause why he should not be adjudged and held in contempt of court.

Title 18, U. S. C., §1406 (Narcotic Control Act of 1956) provides in effect that whenever in the judgment of a

United States Attorney the testimony of a witness in any case or proceeding before any Grand Jury for the violation of certain of the Narcotic Laws is necessary in the public interest, he, upon approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify, and upon order of the court the witness shall not be excused from testifying on the ground that the testimony required of him may tend to incriminate him or subject him to a penalty or forfeiture. It further provides that

"... no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution [fol. 44] for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

At the hearing in this proceeding, respondent admitted through his counsel that he had refused to answer the questions propounded to him, offering as his only excuse for his refusal, fear of self-incrimination. He admitted that the order of Judge Edelstein had been issued after receipt of the letter from the Attorney General, and that this order had the effect of granting him the immunity provided in the statute. The respondent offered no evidence on his behalf, but simply took the position that the statute under which Judge Edelstein had issued his order was unconstitutional as violative of the provisions of the Fifth Amendment of the United States Constitution.* Respondent maintains that even though the Narcotic Control Act of 1956 grants immunity to a witness from prosecution in relation to matters as to which he testifies, when compelled

* "No person... shall be compelled in any criminal case to be a witness against himself.... U. S. Const., amend. V.

to testify under such Act, the Act does not grant immunity from state prosecution and therefore does not extend protection as broad as that granted under the self-incrimination clause of the Fifth Amendment.

The basic issue which this Court must therefore decide is whether the immunity provisions of the Narcotic Control Act of 1956 are constitutional and whether the respondent may be punished for contempt for failing to comply with an order issued under the provisions of this Act.

The law apparently is well settled that a federal immunity statute is valid even though it does not grant immunity from prosecution by state authorities. *United [fol. 45] States v. Murdock*, 284 U. S. 141 (1931); *Tedesco v. United States*, 255 F. 2d 35 (6th Cir. 1958).

In *United States v. Murdock*, 284 U. S. 141 (1931) an action for wilfully failing to supply information under the Revenue Acts, the Supreme Court denied the contention that a federal immunity statute must give protection against state prosecutions, stating:

.... This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. *Counselman v. Hitchcock*, 142 U. S. 547. *Brown v. Walker*, 161 U. S. 591, 606. *Jack v. Kansas*, 199 U. S. 372, 381. *Hale v. Henkel*, 201 U. S. 43, 68.

Therefore, it is clear that the federal courts need not concern themselves with whether or not the testimony would be incriminating under the laws of another jurisdiction. The federal courts need only be certain that the immunity statutes extend protection in the federal sphere as extensive as the Fifth Amendment. The privilege of this amendment may be invoked against the federal government only when

there is danger of federal prosecution and it is well established that a grant of immunity from federal prosecution is sufficient to overcome the privilege, notwithstanding a [fol. 46] real danger of state prosecution. *United States v. Murdock*, 284 U. S. 141 (1931).

This concept, as expressed by the *Murdock* decision, is the controlling doctrine in this area today. See, *Tedesco v. United States*, 255 F. 2d 35 (6th Cir. 1958); *United States v. Coffey*, 198 F. 2d 438, 440 (3d Cir. 1952). *Marcello v. United States*, 196 F. 2d 437, 442 (5th Cir. 1952) (where the court stated: The doctrine [of the *Murdock* case] is so strongly entrenched that it appears . . . futile to protest. . . ."); *United States v. Greenberg*, 192 F. 2d 201, 203 (3d Cir. 1951); *United States v. St. Pierre*, 128 F. 2d 979, 980 (2d Cir. 1942).

The decisions in both the state and federal courts which hold that the immunity statutes of either the state or federal government need be only as extensive as either the state or federal constitutional privilege against self-incrimination are apparently based on the "two sovereignties" concept. This concept, simply stated, is that the federal government and the individual states are separate sovereignties and constitutional provisions against self-incrimination are enforceable only against the sovereignty whose constitution guarantees the privilege. *Knapp v. Schweitzer*, 357 U. S. 371, 380 (1958). Such provisions, therefore, pertain only to the protection of a witness from prosecution by the government whose conduct they limit. 8 Wigmore, *Evidence*, 3d ed. § 2258 (1940).

With the above background the result in this proceeding is apparent. It is clear that testimony of a witness may be compelled under a federal immunity statute which provides immunity co-extensive with the Fifth Amendment privilege against self-incrimination; and that a grant of state immunity is not necessary to validity. *Tedesco v. United States*, 255 F. 2d 35 (6th Cir. 1958).

[fol. 47] The Court concludes as a matter of law that the immunity granted by the Narcotic Control Act of 1956 is not unconstitutional; that it is not unconstitutional to compel the witness to testify before the Grand Jury on the matters concerning which he was interrogated, in view of

the immunity granted him by the Narcotic Control Act of 1956; and that refusal of the witness to comply with an order of the court directing him to answer the questions addressed to him constitutes a contempt of court.

The Court finds the respondent to be in contempt of court and directs that he be punished by imprisonment for two years, to commence at the expiration of the sentence which he is now serving. The Court recognizes that the refusal of the witness to answer the questions when first addressed to him may have been a procedural device to secure a determination of the issue of law which he presented. Under those circumstances the Court directs that the witness shall have sixty (60) days from the date of this judgment to purge himself of his contempt by answering the questions which have been addressed to him by the Grand Jury and directs that if he does purge himself of contempt within this period the sentence imposed herein will be vacated. So ordered.

Dated. New York, N. Y. January 29, 1959.

Archie O. Dawson, U.S.D.J.

[fol. 48]

IN UNITED STATES DISTRICT COURT

TRANSCRIPT OF ORAL MOTION TO SET ASIDE
FINDINGS AND SENTENCE

Before: Hon. Archie O. Dawson, D. J.

New York, February 2, 1959, R. 506.

For the Government: Edward Brodsky, Esq.

For the Defendant: Moses L. Kove, Esq.

(Mr. Brodsky stated the Government had made its statement with respect to sentence at the time of the hearing, and had nothing further to add.)

(Mr. Kove stated he had nothing further to add, except he had one question after the sentence.)

The Court: The Court has handed down its opinion in this matter, dealing with these problems of law that Mr. Kove brought up on the hearing, when I indicated the sentence that would be imposed.

Mr. Reina, you have been asked certain questions before the grand jury. Are you now prepared to answer those questions?

The Defendant: I cannot, your Honor.

The Court: You will not answer the questions even now. Well, in accordance with the opinion I have handed down I would impose that sentence. Is there anything you want to say before sentence is imposed?

The Defendant: No.

The Court: Anything you want to say, Mr. Kove?

Mr. Kove: I think I have stated my position the last time.

The Court: The sentence of the Court is that the defendant shall be imprisoned for two years for contempt of court, the two years to start upon completion of the sentence which he is now serving. Defendant shall have the right within sixty days to answer the questions which were [fol. 49] propounded in the grand jury and purge himself of the contempt. If he does do that, then this sentence will be revoked; if he does not, it will stand.

(Mr. Kove stated in the light of the latter part of the Court's remarks, he asked a direction defendant be kept in West Street as a convenient place to confer with defendant if the matter is taken up and to formulate such papers as would have to be drawn.)

(The Court stated that it was not for the Court to decide, but if defendant intended to answer the questions then he should notify Mr. Kove and Mr. Kove notify the Court, and it will be brought before the grand jury no matter where defendant happened to be, and the sentence could be revoked at that time.)

The Court: He has sixty days to perform his duty as a citizen and purge himself of the contempt. If he does not, the sentence will stand. As you have probably told him, Mr. Kove, he will again be asked the questions, and he may

be spending the rest of his life in jail. I do not like to think about a prospect like that, and I do not think he likes that either; but it is up to him to answer the questions or not. I am not going to recommend where they will keep him.

**MOTION TO SET ASIDE FINDINGS AND SENTENCE
AND DENIAL THEREOF**

Mr. Kove: May I now for the record, your Honor, move to set aside the findings of the Court and the sentence upon such findings, upon all the grounds previously stated in the original defense at the trial.

The Court: You may, and I deny it.

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Joseph A. Friel, Official Court Reporter, U. S. District Court.

[fol. 50]

**IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JUDGMENT AND COMMITMENT—February 2, 1959

On this 2nd day of February, 1959 came the attorney for the government and the defendant appeared in person and by counsel, after a hearing held on January 22, 1959 pursuant to an order to show cause filed January 15, 1959 why defendant should not be adjudged in contempt of court for refusing to obey the order of Judge Edelstein dated 12-17-58 directing said defendant to appear before a grand jury and answer questions.

It Is Adjudged that the defendant has been convicted of contempt of Court for refusal to obey the aforesaid order of this court as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) Years, to commence at the expiration of sentence he is now serving.

Defendant shall have sixty (60) days from the date of this judgment to purge himself of his contempt, in which event the sentence imposed herein shall be vacated.

[fol. 51] It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Archie O. Dawson, United States District Judge.
Herbert A. Charlson, Clerk.

[fol. 52]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOTICE OF APPEAL—February 6, 1959

Name and address of appellant:

Giacomo Reina, Federal House of Detention West Street,
New York, New York

Name and address of appellant's attorney:

Allen S. Stim, Esq., 29 Broadway New York 6, New York

Offense:

Contempt of court for refusing to obey the order of Judge Edelstein dated 12-17-58 directing said defendant Giacomo Reina to appear before a grand jury and answer questions.

Concise statement of judgment or order, giving date; and any sentence: by judgment dated the 2nd day of February, 1959 the defendant Giacomo Reina is committed

to the Attorney General or his authorized representative for imprisonment for a period of two (2) years, to commence at the expiration of sentence he is now serving. Defendant shall have sixty (60) days from the date of this judgment to purge himself of his contempt, in which event the sentence imposed herein shall be vacated.

Name of institution where now confined, if not on bail:
Federal House of Detention, West Street, New York,
New York.

[fol. 53] I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Second Circuit from the above-stated judgment.

Dated: February 6, 1959

Giacomo Reina, Appellant.

[fol. 54]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 169—October Term, 1959.

Argued December 9, 1959

Docket No. 25644

UNITED STATES OF AMERICA, Appellee,

—v.—

GIACOMO REINA, Appellant.

Before: Swan and Friendly, Circuit Judges, and Hurlands, District Judge.

OPINION PER CURIAM—Decided December 30, 1959

Appeal from a judgment of the United States District Court for the Southern District of New York, Dawson, J., adjudging appellant guilty of criminal contempt of court for refusing to obey an order directing him to answer certain questions before a federal grand jury. Affirmed.

Allen S. Stim, Attorney for Appellant. Menahem Stim, of Counsel.

S. Hazard Gillespie, Jr., United States Attorney, for Appellee. Joseph DeFranco, Daniel P. Hollman, George I. Gordon, Assistant United States Attorneys, of Counsel.

[fol. 55] Per Curiam:

Pursuant to 18 U. S. C. A. §401(3) appellant was convicted of criminal contempt of court and was sentenced to two years imprisonment for refusing to answer certain questions before a federal grand jury inquiring into alleged violations of the narcotics laws, after he had been granted immunity under 18 U. S. C. A. §1406 and had been ordered by the court to answer the questions. Judge Dawson's well reasoned opinion is reported in 170 F. Supp. 592.

Appellant attacks the constitutionality of §1406. His principal argument is that the immunity granted under this statute will not protect him from state prosecutions. That a federal immunity statute need not do so was settled long ago in *United States v. Murdock*, 284 U. S. 141.¹ He says that the courts should re-examine the *Murdock* decision. But, obviously, such re-examination is not for this court to make.

At the time of his appearance before the grand jury appellant was serving a prison sentence for conspiracy to violate the narcotic laws.² The grand jury sought to question him concerning this crime. Seizing upon certain expressions in *Brown v. Walker*, 161 U. S. 591, which sustained the constitutionality of a federal immunity statute similar to §1406, appellant makes the fantastic contention that §1406 is unconstitutional as applied to him because it does not grant a "general amnesty" or "pardon" for his past offense. The error in this argument is that it attempts to convert a general discussion in the *Brown v. Walker* opinion, page 601, as to the power of Congress to pass acts [fol. 56] of general amnesty into an independent principle

¹ See also *Knapp v. Schweitzer*, 357 U. S. 371, 380; *Tedesco v. United States*, 6 Cir., 255 F. 2d 35; *Corona v. United States*, 6 Cir., 250 F. 2d 578, cert. den. 356 U. S. 954.

² His conviction was affirmed in *United States v. Reina*, 2 Cir., 242 F. 2d 302, cert. den. 354 U. S. 913.

of law, requiring appellant's past offense to be pardoned. No authority is cited to support this extraordinary contention.³

Additional points made by appellant have been considered but are so plainly without merit that they require no discussion.

Judgment affirmed.

[fol. 57]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

GIACOMO REINA, Defendant-Appellant.

JUDGMENT—December 30, 1959

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

[fol. 58] [File endorsement omitted]

[fol. 74] Clerk's Certificate to foregoing transcript (omitted in printing).

³ For decisions rejecting the contention, see *People ex rel. Hunt v. Lane*, 116 N.Y. S. 990, aff'd 196 N.Y. 520; *People v. Fine*, 19 N.Y. S. 2d 275; *People ex rel. Gross v. Sheriff*, 101 N.Y. S. 2d 271, aff'd 302 N.Y. 173.

[fol. 75]

SUPREME COURT OF THE UNITED STATES

No. 664, October Term, 1959

GIACOMO REINA, Petitioner,

v.

UNITED STATES.

ORDER ALLOWING CERTIORARI—April 4, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.